

PRACTICE NOTE

COMMITTAL PROCEDURE IN THE DISTRICT COURT

1. The purpose of this Practice Note is to promote consistent practices for committal proceedings under Parts 5 and 5A of the Summary Proceedings Act 1957 in the District Court. Committal procedure in the Youth Court is contained in the Practice Note entitled 'Committal Procedure in the Youth Court'.
2. This Practice Note comes into force on the 29th of June 2009 and applies until superseded by any subsequent legislation. This Practice Note applies to all committal proceedings to which the new Parts 5 and 5A of the Summary Proceedings Act 1957 and the Criminal Disclosure Act 2008 apply. The Practice Note on Preliminary Hearings 2008 remains in effect for proceedings continuing under the former Parts 5 and 5A.
3. Variation in workloads and sitting schedules of various District Courts may require local modification of any timeframes specified in this Practice Note.

Committal Procedure

4. Where the defendant is charged indictably:
 - a. At the first appearance the defendant or their counsel will be served with the **Notice to the Defendant** and the **Pre Committal Check Sheet** by the Registrar. The defendant will be remanded off to a date at least 21 days after the proceedings were commenced (when 'initial disclosure' is due pursuant to s 12(4) of the Criminal Disclosure Act 2008).
 - b. At the second appearance, by which time the defendant is expected to have arranged any representation, the Court will:
 - i. Ask the defendant whether he or she wishes to plead guilty;
 - ii. Remind the defendant to consider applying for anything in the **Pre Committal Check Sheet**;
 - iii. Remind the defendant that if no such application is made within 14 days of the date the prosecutor is required to file 'formal written statements' under s 168 of the Summary Proceedings Act 1957, he/she will be automatically committed for trial;
 - iv. Consider whether to make timetabling orders under s 32(1) of the Criminal Disclosure Act 2008 with respect to the prosecution obligation to make 'full disclosure' under s 13;
 - v. Remand the defendant to a Post Committal Conference before a Registrar which will be after the date on which the standard committal may take place.
5. Where the defendant is charged summarily with an electable offence:
 - a. At the first appearance the defendant will be remanded to a date which is at least 21 days from when the proceedings were commenced (when 'initial disclosure' is due pursuant to s 12(4) of the Criminal Disclosure Act 2008).
 - b. At the second appearance the defendant will be asked to make an election of either summary jurisdiction or trial by jury. If the defendant fails to make an election at this hearing the matter will proceed in accordance with s 66(5A) of the Summary Proceedings Act 1957, meaning that unless a co-accused is to be tried by jury, the defendant will remain in the summary jurisdiction.
 - c. If trial by jury is elected at the second appearance the defendant or their counsel will be served with the **Notice to the Defendant** and the **Pre Committal Check**

Sheet by the Registrar and the hearing will then proceed in accordance with paragraph 4(b) above, unless the Court considers a further remand is necessary.

6. Where available a Registrar, Community Magistrate or Justices of the Peace may preside at any of the appearances required by paragraphs 4 or 5, rather than a Judge.
7. The defendant may apply, by filing the completed **Pre Committal Check Sheet** in Court not later than 14 days after the prosecutor is required to file formal written statements, for any one or more of the following:
 - a. To be brought before the Court to plead guilty pursuant to s 160 of the Summary Proceedings Act 1957;
 - b. A date for a sentence indication to be given;
 - c. An extension of time for filing an oral evidence order application pursuant to s 178(3) of the Summary Proceedings Act 1957, with supporting reasons;
 - d. An oral evidence order (with an indication of whether written or oral submissions will be made in support);
 - e. Any matter relating to disclosure under the Criminal Disclosure Act 2008.
8. A copy of the completed **Pre Committal Check Sheet** must be given to the prosecution by the defence on the date it is filed in Court. If an application under paragraph 7 requires a hearing, a date must be arranged with the Registry. If a defendant is in custody the Registrar will arrange an Order to Produce for that date. If necessary the date of the Post Committal Conference will be amended.
9. **If no application under paragraph 7 is received within the required time the defendant will be committed for trial in accordance with s 177(2) of the Summary Proceedings Act 1957 without any consideration of the prosecution evidence or a hearing.**
10. Applications by the prosecutor for extensions of time under s 168(2) of the Summary Proceedings Act 1957 or s 32(3) of the Criminal Disclosure Act 2008 must be made with supporting reasons. If granted, the date of the Post Committal Conference will need to be amended.
11. When an oral evidence order is granted in respect of any one or more witnesses a committal hearing date will be set and the hearing will proceed in accordance with ss 184A – 184I of the Summary Proceedings Act 1957. These will generally be heard by Justices of the Peace or Community Magistrates.
12. If the defendant pleads guilty before being committed, including after a sentence indication, the matter will only be committed for sentence in the High Court if the District Court does not have or declines jurisdiction.

Sentence Indications

13. This Practice Note is not intended to prescribe sentence indication practice at status hearings in the summary jurisdiction but is provided as guidance for sentence indications prior to committal or trial in the District Court. The District Court is unable to give sentence indications for offences on Part 2 of Schedule 1A of the District Courts Act 1947.
14. A sentence indication is a statement by a Judge on request by a defendant, which may describe the type and length (or quantum) of sentence the Judge will impose should the accused plead guilty to the charge(s) before the Court at the time the indication is given. A Judge has a discretion whether or not to give an indication and a discretion to determine the nature of an indication in the particular case.
15. A sentence indication is given in open court with the accused present. Counsel for the accused and the prosecutor are also present. Reporting restrictions will apply.

16. Sentence indications will only be given if there is sufficient information. This should include:
 - a. A summary of facts;
 - b. A victim impact statement;
 - c. A list of the defendant's previous convictions;
 - d. Submissions from both the prosecutor and defence counsel.
17. A Judge may decline to give a sentence indication if insufficient information is available.
18. A sentence indication will specify the sentence applicable at the time it is given and will cease to have effect if the defendant does not plead guilty within a period specified by the Judge.
19. If the defendant pleads guilty on the basis of the information, but a change in circumstances means the sentencing Judge (usually the Judge who gave the indication on the particular charge) imposes a more severe type of sentence, the defendant will be permitted to vacate his or her guilty plea and replead (per *R v Smail* [2008] 2 NZLR 448).
20. The indication should be recorded and a written transcript signed by the Judge will be placed in the Court file.

RJ Johnson
Chief District Court Judge
June 2009